

[Additional Counsel on Signature Page]

**NORTHSTAR FINANCIAL ADVISORS,  
INC., on behalf of itself and all others  
similarly situated,**

## CLASS ACTION

**SCHWAB INVESTMENTS; MARIANN  
BYERWALTER, DONALD F.  
DORWARD, WILLIAM A. HASLER,  
ROBERT G. HOLMES, GERALD B.  
SMITH, DONALD R. STEPHENS,  
MICHAEL W. WILSEY, CHARLES R.  
SCHWAB, RANDALL W. MERK,  
JOSEPH H. WENDER and JOHN F.  
COGAN, as Trustees of Schwab  
Investments; and CHARLES SCHWAB  
INVESTMENT MANAGEMENT, INC.,**

Date: April 21, 2016  
Time: 1:30 p.m.  
Courtroom: 8, 4th Floor, San Jose  
Judge: Honorable Lucy H. Koh

Defendants.

[08-cv-04119-LHK] DECL. OF RICHARD BERSE IN SUPPORT OF PLTF'S MOT. FOR CLASS CERT.

1 Richard Berse, being duly sworn, does hereby declare under the penalties of perjury, pursuant  
2 to 28 U.S.C. §1746, that:

3 1. I am the President and sole shareholder of plaintiff Northstar Financial Advisors, Inc.  
4 (“Northstar”). I make this Declaration on personal knowledge, in support of Northstar’s motion to  
5 certify the class in this action defined as all persons who invested in shares of the Schwab Total  
6 Bond Market Fund, who held those shares as of August 31, 2007, or who acquired those shares at  
7 any time from September 1, 2007 through February 27, 2009, and who were damaged thereby.

8 **BACKGROUND**

9 2. I graduated from Lehigh University, College of Business and Accounting, in 1976  
10 with a Bachelor of Science in Accounting. I obtained my license as a Certified Public Accountant  
11 after passing all four parts of the CPA exam in 1980. From 1976 until early 1993, I was employed  
12 in public accounting in Newark, New Jersey and New York City. In addition to being a CPA, I also  
13 hold an American Institute of Certified Public Accountants Certificate in Financial Planning.

14 3. In 1993, I founded Northstar as a financial advisory firm. Northstar’s financial  
15 advisory services are based primarily on an asset allocation formula using low-cost mutual funds.  
16 Northstar currently manages in excess of \$50 million in assets on behalf of approximately 100  
17 different investors.

18 4. In early 1994, I affiliated with The Charles Schwab Company (“Schwab”) as an  
19 independent financial advisor. As an independent financial advisor, I had access to Schwab’s  
20 financial products and could trade on Schwab’s website on behalf of my clients. I chose to affiliate  
21 with Schwab because of its name recognition to my clients and reputation for integrity and quality  
22 investment products.

23 **NORTHSTAR’S INVESTMENT IN THE BOND FUND**

24 5. In or about 2002, I conducted research on Schwab’s website and chose the Schwab  
25 Total Bond Market Fund (the “Bond Fund”) for those of my clients who I determined should have  
26 investments in bonds. I chose the Bond Fund because it was an index fund that had lower  
27

1 management fees than actively managed funds and because I did not have to concern myself with an  
2 active fund manager underperforming the index.

3 6. From 2002 to early 2008, I followed the performance of the Bond Fund and was  
4 satisfied that its performance was consistent with that of a bond index fund that tracked the Lehman  
5 Index.

6 **DEFENDANTS' BREACH OF THEIR FIDUCIARY DUTIES TO TRACK THE INDEX**

7 7. In March 2008, the Bond Fund began to substantially underperform the Lehman  
8 Index. For example, from February 29, 2008 (the last trading day in February) to March 31, 2008  
9 (the last trading day in March), the Bond Fund's net asset value (NAV) per share fell from \$9.78 to  
10 \$9.43 (a decline of approximately 3.58%). The Bond Index, during that same period of time, rose  
11 from a closing price of 1,406.86 on February 29, 2008 to 1,411.66 on March 31, 2008. At the time,  
12 Northstar held approximately 240,000 shares of the Bond Fund under management, with a market  
13 value of approximately \$2,280,000. *See* schedules of client holdings at Exhibit A. Accordingly, in  
14 March 2008 alone, my clients lost market value on those shares of approximately \$81,600.

15 8. By April 1, 2008, I grew concerned that the Schwab Bond Fund was not constructed  
16 to track the Bond Index, and considered whether to sell my clients' shares in the Fund. I was  
17 concerned that Schwab was breaching its agreements and fiduciary duties to my clients, as well as to  
18 other investors.

19 9. On April 1, 2008, I spoke with Andrew M. Cook, who I understood was employed by  
20 Charles Schwab Investment Management ("CSIM"), the investment advisor to the Index Fund, to  
21 understand why the Bond Fund had underperformed his index. Mr. Cook explained that Schwab did  
22 not consider the Bond Fund to be an index fund, that CSIM was entitled to actively manage the  
23 Index Fund's portfolio, and that CSIM had invested the portfolio in high risk collateralized mortgage  
24 obligations that were not representative of the bonds that were part of the Bond Index.

25 10. Mr. Cook's statements were not consistent with Schwab's contractual and fiduciary  
26 obligations to operate the Bond Fund as an Index Fund. After speaking to Mr. Cook, I entered trades  
27 on Schwab's website to effectuate the sale of nearly all Bond Fund shares that I owned for my  
28 clients.

1           11. During the middle of 2008, I had various similar conversations with Schwab  
2 representatives, including Scott Smith and Kimon Daifotis (the portfolio manager). In those  
3 conversations I asked Schwab (i) to reimburse my clients for the damage caused by the Bond Fund's  
4 deviation from the Index, and (ii) to comply with the Bond Fund's fundamental investment objective  
5 to track the Bond Index, or to hold a shareholder vote necessary to change the fundamental  
6 investment objective. Schwab failed to do any of the above.

7                                   **MY DECISION TO FILE SUIT AND DEDICATION**  
8                                   **TO SEE THE CASE THROUGH TO CONCLUSION**

9           12. After failing to make progress with Schwab, I consulted with attorneys and filed this  
10 Action on my behalf and on behalf of a class of similarly situated investors in the Bond Fund.

11           13. As neither Northstar nor I owned shares directly in the Fund, but rather only invested  
12 in the Fund on behalf of my clients, there existed a concern as to whether I had "standing" to sue  
13 Schwab for its deviation from the fundamental investment objective. My brother-in-law Henry  
14 Holz, a Northstar client who invested in the Bond Fund, agreed to assign his claims to me to ensure  
15 my standing to pursue this litigation. Copies of those assignments are annexed as Exhibits B and C.

16           14. I recognize that as a class representative I have responsibilities to the Class and to the  
17 Court. Among other things, I have consulted frequently with my counsel Greenbaum Rowe Smith &  
18 Davis LLP and Wolf Popper LLP with respect to litigation strategy, have reviewed and proposed  
19 changes to Court documents, and am willing to travel to San Francisco, if necessary, for Court  
20 appearances or to submit to deposition.

21           15. As the case has proceeded, it has become apparent to me that Schwab will continue to  
22 contest my ability to proceed as the sole class representative by way of an assignment from Mr. Holz.  
23 Further, Schwab has argued that it actually began to deviate from the composition of the Bond Index  
24 as early as 2005 and has suggested that Henry Holz and I (by virtue of the assignment) may be an  
25 atypical or inadequate class representative because Mr. Holz first invested in 2007 after Schwab began  
26 to deviate from the Index.

27           16. To moot those purported defenses, I asked one of my long-time clients, Odessa Hall, to  
28 join me as a second class representative plaintiff in this Action. Ms. Hall is a retiree, on a fixed

1 income, and is exactly the type of investor that a passive bond index fund is suited to. I made on Ms.  
2 Hall's behalf an investment of \$142,500 in the Bond Fund in 2002, one of the largest investments  
3 among Northstar's clients. Based on the calculations provided to me by my counsel in this action,  
4 Ms. Hall incurred damages of approximately \$9,600 as a result of the defendants' failure to exercise  
5 their fiduciary duties to ensure that the Fund adhered to its fundamental investment objectives (of  
6 which she has received approximately \$1,250 as compensation from the SEC Fair Fund).

7 17. Ms. Hall would be an excellent class representative. Although I am individually more  
8 than adequate to represent the Class, Ms. Hall would strengthen that representation.

9 18. There is no doubt that CSIM and the Trustees of the Schwab Investment trust violated  
10 their duties to investors when they caused the Bond Fund to deviate from the fund's stated  
11 fundamental investment objectives, and I am dedicated to seeing this case through to the end.

12  
13 Dated: 1/13/16

  
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RICHARD BERSE